

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Dutra Analyst: LuAnna Hass Bill Number: ACA 22  
Related Bills: See Legislative History Telephone: 845-7478 Introduced Date: February 9, 2004  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** California Tax Commission/Continue BOE Duties As Well As Administer Income Taxes

### SUMMARY

This constitutional amendment would:

- change the name of the State Board of Equalization (BOE) to the California Tax Commission (CTC), and
- require the CTC, in addition to performing the existing duties of BOE, to collect and administer "taxes on or measured by income," herein referred to as "income taxes."<sup>1</sup>

In addition, this constitutional amendment would make technical changes to the term limits imposed on the members of the BOE/CTC. These changes do not affect the department and are not discussed in this analysis.

### PURPOSE OF THE BILL

According to the author's staff, the purpose of this measure is to streamline state government tax administration.

### EFFECTIVE/OPERATIVE DATE

This measure would be effective the day following passage by the voters in the next general election, which would be November 2, 2004. This measure states that it would be operative on the first day of the sixth calendar month commencing after the voters approve the measure.

### POSITION

Pending.

<sup>1</sup> In this analysis "income" tax includes the franchise tax, which is a corporate tax measured by income and administered by the FTB.

Board Position:	Department Director	Date
_____ S _____ NA _____ NP		
_____ SA _____ O _____ NAR	Gerald H. Goldberg	3/8/04
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## **ANALYSIS**

### FEDERAL/STATE LAW

The Internal Revenue Service (IRS) collects and administers the federal income tax and various other taxes, including employment taxes. Pre-payment tax appeals are adjudicated by the United States Tax Court. Following payment, suits for refund are litigated in U.S. District Court or the U.S. Court of Federal Claims.

Under California law, three separate taxing agencies are involved with the income tax laws:

- Employment Development Department (EDD) administers withholding of California's personal income taxes (PIT) by California employers. The employers withhold PIT from their employee's wages and transmit the withheld amounts to EDD. EDD administers this PIT wage withholding program, along with other employment-based programs.
- Franchise Tax Board (FTB) administers California's Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL).
  - FTB collects taxes under the PITL and CTL through withholding from sources other than wages, payment of estimated income taxes, and other types of payments.
  - FTB administers other non-income tax related programs: Senior Citizens Homeowners and Renters Property Tax Assistance program (HRA), child support and other non-tax debt collection programs, Political Reform Audit (PRA), and the Non-admitted Insurance Tax program (NIT). Further, FTB is responsible for developing and implementing the California Child Support Automation System (CCSAS).
- BOE, an agency equivalent that does not report to the Governor, administers property, sales and use, and certain other tax laws. The five-member BOE is vested with the authority to decide administrative appeals of various taxes. These taxes include BOE administered sales, use, and special taxes such as fuel taxes, excise taxes, and environmental fees. In addition, the five-member board hears taxpayer appeals of FTB actions on income tax, corporation tax, and HRA matters.

### THIS BILL

This constitutional amendment would rename BOE, in its entirety, as the CTC. In addition to performing the existing duties of BOE, this measure would give the CTC the added responsibility for collecting and administering income taxes.

### IMPLEMENTATION CONSIDERATIONS

The Revenue and Taxation Code requires FTB to administer and enforce the income tax laws. This constitutional amendment generally would give the same responsibility to the CTC, which could result in administrative conflicts between FTB and CTC. FTB may have to continue its statutory responsibility to administer the income tax laws until such time as directed otherwise through legislation (enabling legislation) or order of a state appellate court. According to the author's staff, the author anticipates that enabling legislation to transfer the responsibilities would be introduced once the voters pass the constitutional amendment.

When providing for the enabling legislation, clarification should expressly be provided in the following matters:

- Certain programs administered by FTB are not income taxes: homeowners and renters assistance, non-tax debt collection, political reform audit, and nonadmitted insurance tax programs. It is unclear whether it is the author's intent to shift responsibility for these programs to CTC or to continue these programs under FTB.
- Unless the author intends for FTB's California Child Support Automated System (CCSAS) responsibilities to remain with FTB, the enabling legislation should address CCSAS responsibilities.

## **LEGISLATIVE HISTORY**

AB 2000 (Dutton, 2003/2004) would abolish FTB and transfer its powers and duties to BOE. This bill is with the Assembly Rules Committee.

AB 2472 (Wolk, 2003/2004) would create the California Tax Court, which would replace the five-member BOE as the forum to hear and determine taxpayer appeals with respect to determinations under the sales and use tax laws, insurance laws, and the PITL and CTL. This bill is with the Assembly Rules Committee.

AB 2000 (Dutton, 2003/2004) would abolish FTB and transfer all duties and powers to BOE. This bill is with the Assembly Rules Committee.

ACA 13 (Leonard, 2001/2002), a constitutional amendment similar to this measure, would have changed the name of the BOE to the CTC and required the CTC to collect and administer income taxes. This measure was held in the Assembly Appropriations Committee.

AB 15 (Klehs, et. al.; 1993/94) would have abolished the FTB and transferred its duties and powers to the BOE. Governor Wilson vetoed AB 15. The veto message stated there was an inherent conflict of interest for the BOE to serve as both administrator of the tax system and the appellate body for taxpayer appeals.

## **OTHER STATES' INFORMATION**

Other states have a central taxing authority, commonly named the Department of Revenue. Several states have independent judicial bodies, such as tax courts or tribunals, to adjudicate tax appeals.

## **FISCAL AND ECONOMIC IMPACT**

This constitutional amendment in and of itself should not affect departmental costs and tax revenue. The fiscal and economic impact, if any, would result from the ensuing enabling legislation.

## **LEGISLATIVE STAFF CONTACT**

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